

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID TRINIDAD GONZALES,

Defendant/Petitioner, Case No. 3:00 CR 756
-vs- 3:09 CV 2336

UNITED STATES OF AMERICA,

MEMORANDUM OF OPINION

Plaintiff/Respondent.

KATZ, J.

This matter is before the Court on Petitioner's request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

The issuance of a certificate of appealability is not a matter of right. Such certificate may issue only if the applicant has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. 2253(c)(2). This statute codifies the standard set forth by the United States Supreme Court in *Barefoot v. Estelle*, 463 U.S. 880, 892-93 (1982), that “probable cause [for an appeal] requires something more than the absence of frivolity and that the standard is higher than the one of the ‘good faith’ requirement of [28 U.S.C.] § 1915.”

Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are “adequate to deserve further encouragement to proceed further.” *Id.*

In this instance, Petitioner simply reiterates many of the same grounds alleged in his petition under 28 U.S.C. § 2255, as grounds for a certificate of appealability. Without a basis

upon which this Court should grant such relief, Petitioner's enumerated claims are merely a reflection of his habeas petition.

The Court has already determined in this case that Petitioner's arguments are frivolous under § 1915(a). Accordingly, no certificate of appealability shall issue.

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE